

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on January 16, 2001 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob DePratu (R)
Sen. Dan Harrington (D)
Sen. Sam Kitzenberg (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Glenn Roush (D)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 150, 1/10/2001; SB 152,
1/10/2001

Executive Action: SB 58; SB 64; SB 125

HEARING ON SB 150

Sponsor: SEN. DON HARGROVE, SD 16, Belgrade

Proponents: **Dave Galt, Montana Department of Transportation**
 Patrick Heffernan, Montana Logging Association
 Ronna Christman, Montana Petroleum Marketer's
 Association

Opponents: **None**

Opening Statement by Sponsor:

SEN. DON HARGROVE , SD 16, Belgrade, opened by saying that Montana offers certain benefits in terms of untaxed diesel fuel, mainly to agriculture and school busses. This fuel is dyed for easy identification. Since there has been some abuse, intentional or not, it was decided a couple of years ago to mark the tanks with decals put out by the Department of Transportation. This was not as effective as anticipated; some people were still getting or selling this fuel at unmarked pumps, so then the imposing of a penalty was discussed, by this committee. He stated that there was a penalty in place under the criminal code of \$1,000 or up to 6 months in jail which he deemed as too severe. This bill serves to get retailers to mark the pumps to keep everyone legal, it does away with the criminal penalty and puts in a \$100 fine instead for each pump. He referred to Ms. Erickson as having an amendment dealing with the penalty for subsequent violations as also being \$100, not \$500 as erroneously written in the bill.

{Tape : 1; Side : A; Approx. Time Counter : 4.2}

Proponents' Testimony:

Dave Galt, Montana Department of Transportation stated this would be a civil penalty against the retailer, and that he was aware of the mistake regarding the \$500 fine, saying he was in favor of the amendment to reduce subsequent violations to the same \$100 fine. He repeated that in the interim, the governor had set up a Fuel Tax Advisory Council to which the Department had brought a number of new ideas. The ones that were approved by the Council were then brought before the Legislature by the Department, and this proposed bill is one of those.

Ronna Christman, Petroleum Marketer's Association, stated that with the combined numbers of the distributor and retail members, her organization represented 75 - 80% of the pumps addressed in this bill. She referred to a survey the Association did prior to the 1999 legislative session to ascertain whether the industry supported the placing of decals and found overwhelming support not only for that issue but also for the imposing of fines for

failure to display the decals on the pumps. She stated that the Council which she was a member of felt that a criminal penalty was too severe as well as the \$500 fine originally discussed, and allowed as how she and her organization did support the civil penalty of \$100 fine. She reiterated that there was a reason for the availability of the cheaper fuel, and that this should not be abused.

Patrick Heffernan, Montana Logging Association, stated that unmarked dyed diesel fuel pumps provide some jeopardy to the members of his organization, in that they face a much higher fine than \$100 if they inadvertently fill up with the dyed fuel. He felt the penalty proposed was reasonable. He also addressed the potential for vandalism to the decals, saying the retailers have to be watchful.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 9.9}

SEN. JERRY O'NEIL asked if a criminal penalty could be added to the bill in the same amount or if the Department should be enabled to cite people. **Dave Galt** answered that if there was a Supreme Court ruling saying we could not have these kinds of (civil) penalties, then a criminal penalty would be in order and the Department would support such an amendment to the bill. He felt that it was important to have some kind of measure ensuring compliance because of the frequency of abuse. He said he was unaware of the Supreme Court ruling in this regard, and if the civil penalty was not kosher, the Department would be fine with changing it to a criminal penalty. **SEN. O'NEIL** asked whether special powers would have to be bestowed on the Department if it was changed to a criminal penalty. **Dave Galt** answered that if this was done, we would have to make sure that Motor Carrier Services Enforcement Officers had the appropriate section in their authority statutes and said he believed that this was the case right now because these officers are sworn peace officers appointed by the Director of Transportation and their authority section covered the dyed fuel and special fuel statutes. **SEN.**

VICKI COCCHIARELLA brought up the issue of vandalism to the decals and wondered if a retailer was allowed to make his own decal copies to have a ready supply on hand in order to avoid being penalized when one was removed. **Dave Galt** stated that retailers would be supplied with enough copies to avoid that kind of situation.

Closing by Sponsor:

SEN. HARGROVE closed on SB 150, referring to the fiscal note which started out rather high as to get everyone's attention and

then dropped back to almost nothing as soon as this was implemented.

HEARING ON SB 152

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: Gary Gilmore, Montana Department of Transportation

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 15.1}

SEN. DALE MAHLUM opened by saying he is bringing this bill before the committee at the request of the MDT, asking to revise the laws dealing with the disposition of excessive MDT lands. He pointed out that once in private hands, taxes would be paid on these properties.

Proponents' Testimony: Gary Gilmore, Engineering Division, MDT

He stated that this bill would simplify the process of disposition of the land as well as maximize the Department's profits. **EXHIBIT** (his12a01)

Questions from Committee Members and Responses:

SEN. O'NEIL referred to a perceived error in the bill regarding the requirements for public auction. **Gary Gilmore** did not understand the question and asked for clarification. **SEN. O'NEIL** repeated his concern was with subpart 2, (b) which seemed to be referring only to (2) and not (1). ***{Tape : 1; Side : A; Approx. Time Counter : 23.8}***

Gary Gilmore stated that the Department still required appraised value, that this wording may be an oversight. He then referred to Legal Services. **Ms. Erickson** stated that in section 3, 60-4-203, subsection 3 it says "a sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value" and she went on to say that the interest must be appraised at fair market value. She went on to say the reason for (b) was to ensure that if the property was sold to a government entity, they have to get fair market value for it. As an example, she stated that if there was valuable property to be sold to a school district without an auction, it could not be sold at a discounted price. **SEN. O'NEIL** still saw a conflict in the wording. **Ms. Erickson** that (b) only was there to ensure that

any sale to a government entity has to be at a fair market value, it cannot be below fair market value. She said section 2 deals with land sold to a government entity, not a public auction; section 3 deals with land slated to be sold at a public auction, therefore the requirements are somewhat different, thus eliminating a perceived conflict. **SEN. O'NEIL** was satisfied with this explanation. **SEN. RIC HOLDEN** took issue with section 1, subpart 2 and asked if it was a policy decision to take out the part where the original owner was able to get back the land. He stated that some people were upset over their land being taken for highway construction, for example, and wondered if at some point they could get part of it back. In looking at page 2, he said it appeared that it did not allow for a private citizen to get back land. **Gary Gilmore** said that most of this property consisted of small parcels where the landowner had no use for the uneconomic remnants, if, for example, the Department took 30 acres of a 40 acre tract, built a road through the middle of it, leaving two 5-acre tracts on either side. *{Tape : 1; Side : B; Approx. Time Counter : 0.4}* He said a lot of this type of property is now being sold to the adjacent landowner, not necessarily the original owner, and he felt this is the logical thing to do because it allows them a better chance to get the land back instead of them having to bid against somebody who wants to pick up multiple parcels and was able to outbid them. He added that most of these parcels were valued at less than \$10,000. **SEN. HOLDEN** asked where in the bill it said that the adjacent landowner could buy it back if it was less than \$10,000. **Gary Gilmore** answered that they are the logical people to come forward but there was nothing in the law that said the MDT had to offer it to adjacent landowners. **SEN. HOLDEN** stated that at one point this was logical because it had been put into the bill. He wanted an explanation why the adjacent landowner apparently did not have the chance anymore to pick up this land without an auction if it was less than \$10,000. **Gary Gilmore** replied that there was no auction necessary for parcels valued under \$10,000, and that most of the parcels fall under this category. He stated that adjacent owners would be contacted first for economic reason, but repeated that there was nothing in the law stating they have more rights to it than anyone else but that these small parcels might not be of any value to anyone else. **SEN. HOLDEN** wondered if this meant that the Department wanted to be able to go directly to other parties, as well, in addition to those adjacent owners. **Gary Gilmore** stated that there was interest expressed by local government entities for land they own, and cited the city of Missoula as an example, who wanted a piece of MDT land to build a park. He stated that under present law, they could not sell it to the city, they had to hold a public auction because it is valued at over \$10,000, and that is one reason why they want the law changed. **SEN. ROBERT DePRATU** asked if he would

consider an amendment giving the adjacent landowner first opportunity to buy the parcel at fair market value if it was appraised under the \$10,000. **Gary Gilmore** stated this would work as long as there was only one adjacent landowner. **SEN. DePRATU** thought the amendment could be worded as to include a sealed bid process if there was more than one adjacent landowner. **Gary Gilmore** said he had no problem with it because this would constitute a public auction as that process starts out with sealed bids. **CHAIRMAN ARNIE MOHL** then added another dimension by asking if an original owner had first rights to buy it back. **Gary Gilmore** stated that provision was removed in 1995. **CHAIRMAN MOHL** related an incident where he had given up some property and would have like first right to buy it back. **SEN. DAN HARRINGTON** wondered if the Department did not create more problems by giving preferential treatment to potential buyers. **Gary Gilmore** admitted that with the proposed amendment and the original owner issue, it could become a real mess. **SEN. HOLDEN** allowed as to how difficult it must be in some cases to contact the original owners, but he wanted the Department to take another look at page 1, lines 22 through 26 to see if there was a way to give the original owner first chance to re-purchase the land. He conceded that if the sale was 40 or 50 years ago, this would be a most difficult task; his main concern, though, was with the rights of private citizens. **CHAIRMAN MOHL** asked if it could be worded in such a way that if the previous owner comes forward and wishes to purchase it, he has the first right, without MDT having to go and find him. **SEN. DePRATU** questioned whether "current owner" was meant rather than "previous", especially when the sale dated back 40, 50 years, and the ranch or land changed hands; then the current adjacent landowner should have first right to re-purchase. He clarified that was what he meant by his proposed amendment. **SEN. O.NEIL** suggested that the Department should notify all adjacent landowners by letter of its intent to resell the land. **CHAIRMAN MOHL** then talked about an incident that happened to him regarding to a gravel pit he used to own. The property was purchased when the highway went through many years ago, it came up for sale, the adjacent landowner was unaware of the sale, and a company from out of state came in and bid on it. By the time the owner found out, it had been sold without him ever having an opportunity to buy it which really created a problem because he himself had to hunt down this company and he ended up paying more for the three acres than he had paid for 40 acres from a local landowner. For that reason he wanted the bill to ensure the adjacent landowner had first rights. **SEN. DALE BERRY** depending on the value of the land, he thought first right of refusal made more sense. If for instance someone wanted to use the land for a pasture, and a 7 / 11 store came in as well, and it would be appraised at a higher value, the prospective buyer should be given the opportunity to match that offer. **SEN.**

MOHL stated this should be worked out in an amendment prior to taking executive action. **Gary Gilmore** stated he wanted to review any amendment. **CHAIRMAN MOHL** assured him that he could and asked for him to come to the committee with any other suggestions.

Closing by Sponsor:

SEN. MAHLUM closed on SB 152.

{Tape : 1; Side : B; Approx. Time Counter : 18.2}

EXECUTIVE ACTION ON SB 58

Ms. Erickson stated that there was an amendment to the bill as well as to the other two pending.

Discussion:

SEN. HOLDEN asked that **Ms. Erickson** explain the amendment, and she stated that the civil penalty was added as to avoid conflict. **EXHIBIT(his12a02)** simply says that there will be a civil penalty for the first offense, and it will become a criminal penalty for any subsequent offense. She referred to **Bob Turner**, Motor Fuels Division, who was available for questions. **CHAIRMAN MOHL** asked him to step up. **Bob Turner** stated that the reason for the amendment was to eliminate the criminal penalty which was still in the bill. **SEN. BERRY** wondered if the sponsor had seen the amendment. **Bob Turner** confirmed that he had.

Motion/Vote: **CHAIRMAN MOHL** moved that **AMENDMENT TO SB 58 DO PASS**.
Motion carried unanimously.

Motion: **SEN. DEPRATU** moved **SB 58 AS AMENDED**.

Discussion:

SEN. O'NEIL still questioned whether the civil penalty does away with the right of due process.

Motion/Vote: **CHAIRMAN MOHL** moved that **SB 58 AS AMENDED DO PASS**.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 64

Motion: **SEN. SAM KITZENBERG** moved the **AMENDMENT TO SB 64**.

Discussion:

Ms. Erickson stated that the amendment made it possible to get a written statement regarding the seatbelt not only from a licensed physician but also from an "advanced practice registered nurse" **EXHIBIT (his12a03)**. The amendment was requested by the nurses because of the rural character of this state where it was more likely to find such a nurse than a doctor, making it easier for people to get this exemption. **SEN. COCCHIARELLA** asked if it was possible to add "physician's assistant" to the amendment without going through drafting. **Ms. Erickson** allowed as how this would not be a problem and said that the amendment would then read on line 14 would be "from a licensed physician, an advanced practice registered nurse, or a physician's assistant", making it three entities.

Motion/Vote: **SEN. MOHL** moved that **AMENDMENT TO SB 64 DO PASS**.
Motion carried unanimously.

{Tape : 2; Side : A; Approx. Time Counter :1.5}

Motion/Vote: **SEN. MOHL** moved that **SB 64 AS AMENDED DO PASS AS AMENDED**. Motion failed 3-7 with Cocchiarella, Harrington, and Kitzenberg voting aye.

Motion/Vote: **SEN. HOLDEN** moved that **SB 64 AS AMENDED BE TABLED**. Motion carried 7-3 with Cocchiarella, Harrington, and Kitzenberg voting no.

EXECUTIVE ACTION ON SB 125

Ms. Erickson stated that there are two amendments to SB 125.

Motion: **SEN. KITZENBERG** that moved **SB 125 DO PASS**.

Ms. Erickson offered 2 amendments to this bill,
EXHIBIT (his12a04) and **EXHIBIT (his12a05)**.

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion **SB 125 of due not pass**. She explained that she had done a little survey while driving to Helena; on the Interstate, about 50% of the cars were driving with their headlights on; when she got to the two-lane road, she counted 65 cars without and 48 with headlights on, without having a statute. Referring to previous testimony, she mentioned the automatic daytime running lights in some cars, the failing batteries if lights were left on, and so forth. She felt that this should be a voluntary thing and not something to be legislated.

Discussion:

Sen. Kitzenberg referred to a similar bill he had carried in the House and stated that his main concern was if this bill could save lives and was told that it did. He granted it could be an inconvenience, and signs would have to be posted. He related a recent fatal accident involving family of a staff member where a darker car without headlights was not observed. He repeated that there would be a 20% reduction in accidents, and said that if he could enact one law that would reduce the pain and cost and prevent those kind of accidents from happening, he would have done his job. **SEN. DePRATU** said the way this was handled in Canada, for instance, was to require new vehicles to be equipped with daytime running lights and thus phased this in. He also addressed the problem with dimming dashboard lights when the headlights are turned on and stated that sometimes one could not even read the speedometer. He felt this was a problem, and to overcome that people would have to have the daylight driving switches installed to counteract this, at a cost of \$50 - 75. He was hesitant to put that cost on Montanans even though he agreed with **Sen. Kitzenberg** that headlights could save lives. **SEN. HOLDEN** brought up that **SEN. COCCHIARELLA** brought a do not pass motion which would mean it would go to the floor. **Ms. Erickson** interjected if it passes. **SEN. HOLDEN** asked **SEN. COCCHIARELLA** what her intention was regarding her motion. **SEN. COCCHIARELLA** said she would withdraw her do not pass motion and move to table the bill.

Motion/Vote: **SEN. MOHL** moved that **SB 125 BE TABLED**. Motion carried 7-3 with Harrington, Kitzenberg, and Pease voting no.

ADJOURNMENT

Adjournment: 4:15 p.m.

SEN. ARNIE MOHL, CHAIR

MARION MOOD, SECRETARY

AM/MM

EXHIBIT(his12aad)